

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JUNE 29 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Appellee,	)	2 CA-CR 2006-0185
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
RODNEY EUGENE RHODES,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054195

Honorable Kenneth Lee, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General  
By Randall M. Howe and Julie A. Done

Phoenix  
Attorneys for Appellee

Law Office of Payson & Gattone  
By Paul J. Gattone

Tucson  
Attorneys for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 After waiving his right to a jury trial, appellant Rodney Rhodes was found guilty by the court of two counts of attempted first-degree murder, two counts of aggravated

assault with a deadly weapon or dangerous instrument, eleven counts of endangerment, and one count of drive by shooting. The court sentenced Rhodes to presumptive terms of imprisonment, some concurrent and some consecutive, for a total period of 23.5 years. On appeal, Rhodes maintains the evidence was insufficient to establish that he was one of the men who committed these crimes. We affirm.

¶2 “When reviewing for sufficiency of the evidence, we determine whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have convicted the defendant of the crime in question.” *State v. McGill*, 213 Ariz. 147, ¶ 17, 140 P.3d 930, 935 (2006). So viewed, the evidence established that in the afternoon of August 27, 2005, five men drove to a house in Tucson and opened fire on Zachary and Eugene, who were talking outside in front. At least eleven other friends and relatives of Zachary and Eugene occupied the house. The assailants made two other passes at the house, one from the alley and the other from the street. During the approach from the alley, the five men exited the vehicle. A neighbor, J., witnessed the last two approaches from a distance of eighteen feet and identified Rhodes as one of the armed assailants. J. called 911 and relayed what he had witnessed, giving the license plate number of the assailant’s vehicle.

¶3 Shortly after the shooting, Tucson Police Officer Steven Pupkoff heard a description of the automobile involved in the shooting on his police radio and recognized it as a vehicle he had seen before. One hour later, Pupkoff saw the vehicle turn quickly into a driveway once his police vehicle was in sight. Pupkoff followed and saw one African

American male run from the parked vehicle and jump a fence and another look out the front door of what was later discovered to be a vacant, burned-out apartment in the complex where the car had stopped. The driver's door of the vehicle had been left open, and when Officer Neal Ronald arrived and investigated the interior of the vehicle, he found a semi-automatic handgun and a shotgun.

¶4 During the police investigation that afternoon, Ronald interviewed Erika, who lived in the duplex next to where the vehicle had been parked, and found Rhodes in Erika's apartment. Erika testified that Rhodes had appeared at her bedroom door, had asked to "come in and shower," and had hidden a gun in a closet under the water heater. Ronald recovered a revolver wrapped in a blue towel and a brown shirt or sheet; there was a spent cartridge in each chamber of the revolver. Rhodes's palm prints and some of his fingerprints were found in three places on the exterior of the white automobile.

¶5 J. later identified Rhodes in a photographic lineup and again in court as the man he had seen carrying a shotgun and riding in the front passenger seat of the white vehicle he observed near his home on August 27, 2005. He testified that he was positive of those identifications on both occasions.

¶6 Rhodes contends J.'s identification was insufficient evidence of his involvement in the shootings because J. described the front-seat passenger as "heavy-set" and said he had been wearing an orange shirt at the time of the shootings. According to Rhodes, he is not "heavy-set," and J.'s identification was contradicted by Erika's testimony that

Rhodes was wearing a black shirt when he arrived at her apartment. Rhodes also maintains the state failed to prove its case because his fingerprints were not found on the weapons.

¶7 Rhodes suggests he presented “sufficient evidence . . . to raise a reasonable doubt” at trial, but this is not a basis to reverse a criminal conviction. The state is not required “to negate every conceivable hypothesis of innocence.” *State v. Tison*, 129 Ariz. 546, 554-55, 633 P.2d 355, 363-64 (1981). Rather, we will only reverse if evidence is insufficient to support a defendant’s conviction under any hypothesis of guilt. *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).

¶8 We will reverse a conviction for insufficient evidence ““only where there is a complete absence of probative facts to support the conviction. The credibility of witnesses is an issue to be resolved by the [trier of fact]; as long as there is substantial supporting evidence, we will not disturb [its] determination.”” *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996), *quoting State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976). Substantial evidence is that which “reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.” *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). If reasonable minds could fairly differ on whether the evidence establishes a given fact, we will deem the evidence substantial. *State v. Davolt*, 207 Ariz. 191, ¶ 87, 84 P.3d 456, 477 (2004).

¶9 Viewing the evidence in the light most favorable to upholding the court's findings of guilt and resolving all reasonable inferences against Rhodes, *see State v. Atwood*, 171 Ariz. 576, 596, 832 P.2d 593, 613 (1992), *disapproved on other grounds by State v. Nordstrom*, 200 Ariz. 229, 25 P.3d 717 (2001), the evidence supporting Rhodes's convictions is substantial. We therefore affirm his convictions and sentences.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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JOSEPH W. HOWARD, Judge

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PHILIP G. ESPINOSA, Judge